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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re I.R., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.R.,

Defendant and Appellant.

F056497

(Super. Ct. No. 06CEJ600259-3A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James R. Oppliger and David Andrew Gottlieb, Judges.[†]

Tim Warriner, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Lloyd G. Carter and Kathleen A. McKenna, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Cornell, Acting P.J., Gomes, J. and Dawson, J.

[†]Judge Oppliger presided over the jurisdiction hearing. Judge Gottlieb presided over the disposition hearing.

INTRODUCTION

On August 28, 2008, a petition was filed pursuant to Welfare and Institutions Code section 602 alleging appellant, I.R., committed attempted murder (Pen. Code, §§ 664 & 187, subd. (a), count 1),¹ assault by force likely to cause great bodily injury (§ 245, subd. (a)(1), count 2), making a criminal threat (§ 422, count 3), assault by force likely to cause great bodily injury (count 4), and misdemeanor assault (§ 240, count 5). At the conclusion of a contested jurisdiction hearing on September 16, 2008, the juvenile court found the first four counts true. Count 5 was dismissed for insufficient evidence.

At the disposition hearing on October 7, 2008, the court found I.R.'s maximum term of confinement was 12 years 4 months. The court exercised its discretion under Welfare and Institutions Code section 731, subdivision (c) to impose a commitment to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF)² for a maximum term of 7 years 4 months. The juvenile court granted 586 days of custody credit to I.R. On appeal, I.R. contends there was insufficient evidence of sustained fear to uphold the criminal threat allegation.

FACTS

M.F. is I.R.'s mother. At 7:25 p.m. on August 26, 2008, M.F. was in the kitchen cooking for several cousins who were visiting from Louisiana, including D.W. M.F.'s uncle, A.W., was also present. I.R. came home, entered the kitchen, and asked for something to eat. M.F. told him to go ahead and eat. M.F. and I.R. began bickering with each other. A cousin told I.R. to go outside.

¹Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

²DJF was formerly known as the California Youth Authority (CYA). (*In re Lemanuel C.* (2007) 41 Cal.4th 33, 37, fn. 2.) DJF was renamed by statutory enactment in 2005. (§§ 202, subd. (e)(5), 1000, 1703, subd. (c), 1710, subd. (a).) The DJF is part of the Division of Juvenile Justice. (Gov. Code, §§ 12838, 12838.3, 12838.5, 12838.13.) DJF is referenced in statutes, such as sections 731 and 733, that formerly referred to CYA. (*In re N.D.* (2008) 167 Cal.App.4th 885, 890, fn. 2.)

M.F. pinned I.R. down by putting her arms around him from behind him so he could not go outside. I.R. was now arguing with and cussing at one of his cousins. A.W. grabbed I.R. M.F. explained she did not see her son holding anything, but other family members said he was holding a knife. A.W. was trying to calm I.R. down. I.R. was telling M.F. to let him go. M.F. said she sustained an injury to her left pinky finger but did not know how it happened.

Someone called the police. M.F. remembered speaking to a police officer, but did not remember word for word what she told him. M.F. remembered telling the officer that the incident started in the kitchen, she pinned her son down on the couch to keep him from going outside to fight with his cousin, and she did not see a knife until her uncle brought it out of the trash can.

When asked if she told an officer that she had been stabbed with a knife, M.F. said she told him she did not know what she got stabbed with. M.F. said she told the first officer she spoke to that she did not know where the knife came from. M.F. said her uncle pointed out the knife to the officer. M.F. spoke to a second officer who asked her the same questions as the first officer. M.F. remembered telling this officer she had an argument with her son.

M.F. denied saying anything about her son trying to kill her to the officer. M.F. denied telling the officer that I.R. threatened to kill her or that he started the fight with her. M.F. denied telling the officer that she saw I.R. stab the wall or anything else. M.F. acknowledged her hand was bleeding after the incident but did not know how it happened. M.F. did not see her son with a knife and was not in fear for her life or of any of her children.

D.W. is I.R.'s cousin. D.W. was at his aunt's residence when he heard arguing between M.F. and I.R. The two were "horsing around" on the couch. They then began to fight. An uncle grabbed I.R. and pinned him down. Someone said I.R. had a knife. I.R. was cussing at his mother saying, "'F-U, I don't even want to live here, you ain't my momma.'"

D.W. did not see the knife until after the altercation. After the uncle pulled I.R. away from his mother, I.R. started punching holes in the wall. D.W. was not sure whether he told one of the officers that I.R. was yelling he had a knife and was going to stab his mother. D.W. did not remember telling an officer that he saw I.R. pull out a knife and try to stab his mother or that D.W. saw I.R. stab M.F. with a knife. D.W. did remember telling the officer that once M.F. released I.R., he began kicking his mother in the head and I.R. stabbed the wall with a knife.

A.W. testified that he saw M.F. wrestling with I.R. on the sofa. M.F. held I.R. by one arm. I.R. was holding a carving knife and M.F. was wrestling I.R. trying to get the knife away from him. A.W. grabbed I.R.'s arm and put him on the couch. I.R. fell to the floor. A.W. wrestled the knife from I.R., stuck it in the wall, and broke it off.³ I.R. was shouting and angry. A.W. denied that I.R. tried to stab him with the knife.

Officer Christian Ramos of the Fresno Police Department was dispatched to a residence on August 26, 2008. When Ramos arrived 20 minutes after he was dispatched, he found M.F. yelling and screaming, not toward him, but at the whole situation. M.F. told Ramos there was an altercation in her residence involving her son, I.R. M.F. told Ramos that I.R. threatened her multiple times that he was going to kill her. M.F. said she tried to hold I.R. down as he struggled to get out of her hands. When I.R. got free of M.F., he kicked her head five times.

M.F. did not initially see the knife I.R. was holding until he stabbed the wall twice with it. Ramos saw the knife stabs to the wall. Ramos saw that M.F. was injured. Photographs of the holes I.R. made in the wall with the knife and the injury M.F. sustained from his attack were admitted into evidence.

Officers Todd Turney and Robert Alvarez were the first officers dispatched to M.F.'s residence. M.F. told Turney she had been arguing with her son, I.R., and he

³A.W. later said that as he and M.F. were trying to get the knife away from I.R., I.R. was moving his arm around with the knife and the knife stuck into the wall and broke off.

began yelling at her. M.F. grabbed I.R. from behind, they fell on a couch, and they continued to struggle until A.W. pulled I.R. off. I.R. starting kicking his mother in the head. When she got up, M.F. noticed a puncture wound to her hand.

M.F. initially told Turney she did not notice how she suffered the injury during the struggle. M.F. then heard other family members tell her they saw I.R. stab her. D.W. told Turney he saw I.R. and M.F. fighting, yelling, and arguing with each other. D.W. heard I.R. tell M.F. that he was going to stab her with the knife. M.F. gave I.R. a bear hug and they fell to the couch. D.W. told Turney he saw I.R. pull a knife out from around his armpit. D.W. believed I.R. had the knife concealed under his shirt.

D.W. saw I.R. stab M.F. once in the hand. D.W. told Turney that I.R. kept swinging the knife at M.F. When A.W. walked into the room, M.F. let go of I.R. and he kicked M.F. in the head four or five times. Officer Alvarez took a statement from A.W. A.W. was in another room. When he came into the living room, he saw M.F. sitting on the couch with I.R. hovering over her with a knife. A.W. notice blood on the couch. M.F. was trying to hold the hand in which I.R. was holding the knife. I.R. was trying to stab M.F. until A.W. intervened.

Both M.F. and D.W. testified for the defense that they never saw the knife. M.F. stated she was never in fear of I.R.

DISCUSSION

I.R. contends there was insufficient evidence of the allegation in count 3 that he made a criminal threat. I.R. argues there was no evidence that M.F. was in a state of sustained fear after he made his threat.

In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. It is the jury, not the appellate court, which must be

convinced of a defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320; *People v. Johnson* (1980) 26 Cal.3d 557, 578.)

In reviewing a challenge to the sufficiency of the evidence, appellate courts do not determine the facts. We examine the record as a whole in the light most favorable to the judgment and presume the existence of every fact the trier of fact could reasonably deduce from the evidence in support of the judgment. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) Unless the testimony of a single witness is physically impossible or inherently improbable, it is sufficient for a conviction. (Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

The challenged element of making a criminal threat in the instant action is whether the threat made by I.R. caused M.F. to be in sustained fear for her own safety.⁴ I.R. argues that M.F. did not act as though she was afraid, and her conduct was consistent with her stated lack of fear during the jurisdiction hearing. I.R. argues that rather than showing fear of him, his mother struggled with him so he would not fight his cousin. Also, his mother did not flee from him.

The term "sustained fear" has been defined as "a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33

⁴A criminal threat under section 422 has the following elements: (1) the defendant willfully threatened a crime which would result in death or great bodily injury to another person, (2) the defendant made the threat with the specific intent that the statement would be taken as a threat, even if the defendant has no intent to carry it out, (3) the threat was on its face and under the circumstances in which it was made so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution, (4) the threat actually caused the person threatened to be in sustained fear for his or her own safety or for the safety of an immediate family member, and (5) the threatened person's fear was reasonable under the circumstances. (*People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

Cal.App.4th 1149, 1156.) I.R. has marshaled only the evidence that supports his contention. On appeal, we must view the evidence in the light most favorable to the juvenile court's judgment. (*People v. Guerra, supra*, 37 Cal.4th at p. 1129; *People v. Kraft, supra*, 23 Cal.4th at p. 1053.)

No one testified at the hearing that I.R. immediately brandished a knife. I.R. had been arguing and struggling with M.F. for some time before he pulled out a knife. A.W. testified that when he entered the living room, he saw M.F. sitting on the couch. There was blood on the couch and I.R. was hovering over the couch swinging the knife at M.F., trying to stab her, until A.W. intervened and pulled I.R. away. D.W. told Officer Turney that after I.R. stabbed M.F., he kept swinging the knife at M.F., trying to stab her again until A.W. intervened.

When Officer Ramos arrived 20 minutes after he was dispatched, he found M.F. yelling and screaming, not toward him, but at the whole situation. M.F. told Ramos there was an altercation in her residence involving her son, I.R., and I.R. threatened multiple times to kill her. M.F. said she tried to hold I.R. down as he struggled to get out of her hands. When I.R. got free of M.F., he kicked her head five times.

We reject I.R.'s argument that M.F. was not in fear of him because she struggled with him on the couch. It was some time after the struggle began that I.R. pulled out the knife and stabbed M.F. I.R. then hovered over M.F., swinging his knife and trying to again stab her. M.F. reported that I.R. made multiple threats to kill her. Although the exact span of time that I.R. continued assaulting M.F. is unclear, the juvenile court could reasonably infer that M.F. was under sustained fear for her life after I.R. stabbed her because he hovered over her swinging his knife, continually trying to stab her, and uttering multiple threats to her life.

M.F. was still agitated, yelling and screaming, 20 minutes after Officer Ramos was dispatched to investigate the incident and after the other officers had already arrived to the scene. This is evidence of the fear she still felt after the attack. The fact that M.F. denied she was in fear at the hearing was contradicted by (1) her statements and D.W.'s

statements to investigating officers just after the attack and (2) the testimony of A.W. There was sufficient evidence from which the juvenile court could conclude M.F. was in sustained fear for her life for more than a momentary, fleeting, or transitory period of time.

DISPOSITION

The judgment is affirmed.